

Meeting Date: 4-11-06



AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5B



DATE: April 5, 2006

TO: Mayor and Council for Information/Action Regarding Schedule for Next Meeting

FROM: City Manager

SUBJECT: Background Information for Council Study Session on Proposal from Police Officers' Association and Firefighters' Union for Binding Interest Arbitration Ballot Measure for November 2006 Election

EXECUTIVE SUMMARY:

The City of Santa Clara received a request from Police Officers Association (Unit #2) (POA) and Santa Clara Firefighters International Association of Firefighters, Local 1171 (Unit #1) (Firefighters' Union) to place a ballot measure on binding interest arbitration on the November 2006 Ballot. A study session to discuss the topic is set for Tuesday, April 11, 2006 at 7:00 p.m. during the regular City Council meeting.

In addition, and on a parallel track, the POA and Firefighters' Union are taking the steps needed to qualify a ballot measure via an initiative petition drive. The City received a "Notice of Intent to Circulate a Petition" regarding the proposed binding interest arbitration City Charter Amendment from Mr. Alan Davis of Davis Reno, Law Firm/San Francisco, representing the POA and Firefighters' Union. The Petition indicates that the POA and Firefighters' Union are following the process needed to obtain signatures from Santa Clara registered voters in order to place a binding interest arbitration measure on the November 2006 ballot. Any change to the City Charter requires a vote of the electorate.

Policy Considerations

The issue of binding interest arbitration for the POA and Firefighters' Union is an immense issue for the City of Santa Clara. It would be an historic and fundamental change to the way the City operates and relates to our employees, impacting many sections of the City Charter and other governing documents, and affecting the well-coordinated checks and balance system inherent to the existing Charter. This issue has great significance affecting the City now and in the future. Decisions relating to this request must consider what is best for the overall City of Santa Clara.

There are various types of arbitration. Arbitration is a method of resolving disputes between the City and the Union/Bargaining Groups. The proposal before the City Council is for binding interest arbitration, which applies to a new or re-opened labor agreement. When an impasse is reached in negotiations, the issues are submitted to an outside arbitrator (panel) who makes a final and binding decision as to what the agreement should provide, which the City is obligated to implement.

The ballot measure proposed by the POA and Firefighters' Union provides that the City: "shall negotiate in good faith . . . on all matters, relating to the *wages, hours, and other terms and conditions of City employment*, including the establishment of procedures for the resolution of grievances concerning the interpretation or application of any negotiated agreement." The measure also provides that "all [unresolved] disputes or controversies pertaining to *wages, hours, or terms and conditions of employment*" shall be

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submitted to binding interest arbitration. Examples of issues that the POA and Firefighters' Union could ask an arbitrator to determine under this broad language include wages, salaries, benefits, retirement pensions, discipline procedures, grievance processes, and staffing, among others.

City Council and City Management are responsible to make decisions and take actions that focus on the overall good of the community as a whole. The proposal for public safety binding interest arbitration must be evaluated from a "big picture" viewpoint, not simply from the vantage point of the POA and Firefighters' Union.

Major policy issues are involved in this Council decision, policies that have been of primary importance to Santa Clara's elected officials over many years, issues of local control, financial responsibility, service levels, and ultimately the way the City of Santa Clara is governed.

A decision to support binding interest arbitration is a decision to give up control of the City budget, the most fundamental responsibility of the City Council. The City budget determines City priorities, quality and quantity of service levels to the community, provides funds for employee salaries and benefits, maintenance of basic City infrastructures and necessary Capital Improvement Projects. Currently, 51% of the City's General Fund budget is already dedicated to the Police and Fire departments. (See Attachment A.)

If binding interest arbitration were approved for the City of Santa Clara, the City's budget would be handed over to an outside arbitrator, who would make decisions impacting the City's future. An outside arbitrator does not know our City history, has no in-depth knowledge of our complex City finances, or five-year financial projections. They do not have the on-going experience of working with our budgets, which are very complicated and require a tremendous balancing act to meet all of the various community needs that we have in Santa Clara. An arbitrator's award would impact other City department budgets, or could require tax or fee increases in order to pay for a third-party's determination.

An outside arbitrator is not elected by the people, is not accountable to the people, and is not responsible for the ramifications of the decisions they make. The City of Santa Clara and the community of Santa Clara would have to live with those decisions and have to accommodate them in some way. Yet the arbitrators (or proposed arbitrator panel), would make pivotal decisions across a very broad spectrum that would impact our City finances, how we budget, how we operate the City, how we spend the taxpayers monies on salaries and benefits, how we resolve employee issues.

Legal Analysis/Impact On City Charter, City Officials, Policy And Procedural Documents

The City Attorney's Office has reviewed the proposed Charter language on binding interest arbitration (see Attachment B). The legal analysis indicates that this proposal is extensive, affecting many aspects of City government functions, including financial decisions, operational issues, and personnel issues. Significantly, it impacts the General Grant of Power to the City Council, a cornerstone of the Charter. It impacts City Manager budget management and operational responsibilities, Police Chief and Fire Chief operational

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responsibilities, and Civil Service Commission duties and responsibilities. Numerous City Code sections are also involved, in addition to Civil Service Rules & Regulations, Employer Employee Relations Resolution, Personnel and Salary Resolutions, Memorandum of Understandings (MOU) with the POA and Firefighters, City Manager Directive's, Fire Chief's Directives and Police Chief's Directives.

Negotiations Held In 2003 and Follow-up Actions to Address Issues

Concern has been expressed about the 2003 Employer-Employee Negotiations. These negotiations took place during the worst financial crisis the City had ever experienced. Not only was the City's General Fund in unprecedented crisis due to significant decreases in major revenue streams (including sales tax and Transient Occupancy Tax), but also the cost for employee pensions skyrocketed in addition to increases in health costs, and other financial impacts. As an example, the Public Employees Retirement System (PERS) pension impact for public safety employees, grew from 7.3% of salary in 2002 to 26.08% in 2005 (employer portion).

Under these extreme conditions, the City looked for ways to balance the funding crisis while at the same time recognizing the impact of increased pension costs on employees' total compensation and salary. The final negotiated agreements for both Police Officers and Firefighters contained some excellent new benefits and overall total compensation increases for the bargaining groups over the terms of the MOU.

During the 2003 meet-and-confer process, the POA and Firefighters' Union complained that the City's chief spokesperson at the negotiating table was not representing the City in the manner that the City was committed to in its philosophy. In response to the 2003 complaints, the City Manager replaced the Chief Negotiator, and assigned a new Chief Negotiator for the remainder of the process.

The City also held Voluntary Mediation with the POA, which resulted in modifications to the City's position to the benefit of the POA; and which lead to mutual agreement with the POA for a new MOU.

This is the second time in recent years that binding interest arbitration has come before the City Council. The first proposal for binding interest arbitration for Police Officers and Firefighters was submitted on June 29, 2004. At that time, the Council voted to "note and file" the request and "directed the City Manager to meet with the two Union presidents to find out what the problems were that occurred with the [2003] negotiations that led to the POA and Firefighters' Union feeling that they need to change the City Charter and to work with staff to improve the negotiation process."

In separate meetings over several months, the City Manager met with representatives of the POA and Firefighters' Union. The agenda of the meetings was to improve future negotiations by focusing on roles and responsibilities for the City and the public safety employee organizations, discussion of the POA and Firefighters' Union and the City's negotiations preparations, what worked well and what areas needed to be strengthened. The result from the meeting with the Firefighters' president was a mutual commitment consisting of five major points with emphasis on working collaboratively for the best interests of the overall City. Similarly, the meetings with the POA president identified areas of improvement for the future. In my

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judgment, the meetings were productive and well worth the time commitment, resulting in positive feedback from both public safety employee organization representatives. Because of the productive outcomes of these discussions, the City Manager held meetings with all the other eight Bargaining Groups to engage in similar conversations that would lead to improved working relationships. Comments from all employee representatives were positive about the value of these meetings.

Current City Negotiation Process

Most of the employees of the City of Santa Clara are represented by one of 10 employee organizations that "meet and confer" (or negotiate) with the City on matters related to wages, hours, and working conditions. The International Association of Firefighters Local 1171 and the Police Officers Association are two of the 10 units, and they represent 270 City employees. The other eight bargaining units represent 659 employees.

State law requires that cities bargain in good faith with the employee organizations, and describes "impasse procedures" if the parties cannot reach agreement. The City is committed to negotiate in good faith and to see positive resolution of employer/employee issues, as stated in the City's "Employer Negotiation Principles" signed by Mayor and City Council and City Manager and unanimously adopted by the City Council.

At the conclusion of the comprehensive meet and confer process, if the parties have not reached agreement, either party can declare impasse, and the following procedure would occur:

- Impasse is declared by either party submitting to the City Council in writing that a deadlock exists on one item or several items.
- The City Council shall accept or reject all written proposals of either City management or the majority representative employee organization. If the Council rejects the written proposal from both parties, the Council then refers the parties back to the negotiating table to continue to meet and confer and attempt to develop a joint proposal or individual proposals which the City Council will accept.
- The City Council at its discretion can also direct the parties to mediation.
- If an agreement is still not reached through mediation, the next step is a televised public hearing at which the Santa Clara City Council, as the elected representatives of the public, hear the issues with presentations by City management and employee organization representatives. The public also has the opportunity to comment.
- After presentations, public comment, and Council deliberations, options are still available to the Council to direct more meet and confer, impose a settlement, or allow existing terms to stay in place while negotiations continue.

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- In any case, under current impasse procedures, the final decision is made by the City Council, the body that is directly elected by and accountable to the voters.

Strike Prohibition and Fair Treatment

Currently California state law and case law already specifically prohibits police officers and firefighters from striking. The prohibition for firefighters to strike has been in place since 1959, and for the police officers since 1989, 47 years and 17 years, respectively. Over this time, the City of Santa Clara police officers and firefighters have consistently been treated fairly by City Council and City management. City of Santa Clara Police and Firefighters receive fair pay and benefits, enjoy favorable work schedules; work with high quality equipment; receive excellent on-going training and are valued and appreciated in the City organization as well as in the overall Santa Clara community. Attachments to this report include information on police officers and firefighters total compensation adjustments (historical information from 1982 through 2006 Attachments C and D), results of the 2003 negotiations, including salary information (see Attachments E and F).

For reference, as of January 1, 2006, a five year Santa Clara Firefighter receives total annual compensation of approximately \$142,476, which includes a salary of \$100,356 and the balance of \$42,120 in benefits. Also as of January 1, 2006, a five year Santa Clara Police Officer receives total annual compensation of approximately \$157,344, which includes a salary of \$104,352 and the balance of \$52,992 in benefits. Binding interest arbitration would seem unnecessary because traditional processes for labor negotiations have been very effective and successful in resolving differences involving labor agreements, wages and benefits, and working conditions for Santa Clara's Fire and Police personnel.

ECONOMIC/FISCAL IMPACT:

The City Clerk in consultation with the County Registrar of Voters has determined that the cost of a ballot measure for the November 2006 Election is estimated at \$57,111. When a petition process is used, there are additional costs for signature verification relating to the petition ranging from \$2,500 for random checking of 500 signatures only or up to \$17,600 to have all signatures checked. See the City Clerk's report for a detailed explanation of costs. Source of funding would be the City's General Fund. Funds would need to be included in the 2006/07 budget. Although a significant amount, if it is decided to place this on the ballot or if the petition qualifies, I recommend the City cover the election cost as per past practice. In the last 16 years, two initiative petitions qualified to be placed on the Ballot in 1992 and 1998. In both instances, the City paid for the election cost and it is recommended the City maintain this past practice. To maintain the integrity of the process, it would be inappropriate for the petitioners to pay for the election.

The City of Santa Clara is facing huge challenges just to meet our current budget requirements. Over \$20 million dollars from the City's Emergency Reserve Fund have been used over the last four years in order to balance the budget. The five-year financial forecast indicates several more years of deficits. All departments are working very hard to reduce expenditures, increase revenues and creatively reorganize City functions in order to reduce staffing and address the structural budget deficit. The City has a serious budget

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problem that will take everyone at all levels working together to solve it. At this historically most critical time in the City's evolution, proposing to impose outside arbitrators as the City's decision makers in place of the elected City Council will have a detrimental impact on our ability to meet overall community needs. This is a serious concern that cannot be emphasized enough.

The full economic/fiscal impact if binding interest arbitration becomes a part of the City Charter cannot be quantified at this time, although it has the potential to be quite significant, in terms of the costs associated with the arbitration process itself (arbitration costs alone could range from \$100,000 to \$300,000 or more based on other cities experiences), as well as the costs impacts from the arbitrator's decision. (Attachment G provides information from Northern California Agencies that have binding interest arbitration.)

In 2000, the City of Gilroy was required as a result of a binding arbitration decision to increase Fire Department staffing from 6 to 8 firefighters on duty/per shift. The arbitrator's decision made a significant cost impact exacerbated by the fact it had to be implemented immediately.

OPTIONS

There are numerous options available to address the binding interest arbitration proposal. Advantages and disadvantages exist for each option. If Council is interested in pursuing the options, more detailed analysis would be needed. Five basic options for the Council are listed below:

1. The Council could "Note & File" request to place binding interest arbitration on the November 2006 ballot. (Staff recommends this option.)
2. The Council could approve the request to place binding interest arbitration on the November 2006 ballot.
3. The Council could refer to City Manager to create a process to refer binding interest arbitration to a City Charter Review Committee, describe the process for organizing a Charter Review Committee, and prepare a community outreach information program; at the same time, Council could request the POA and Firefighters' Union to withdraw both their request to Council and Petition Drive on binding interest arbitration, in order to allow the Charter Review Committee to study the issue.
4. Refer to the City Manager for report on current City negotiation steps and to define alternatives to binding interest arbitration that are not currently in the City's negotiation process. Examples would include mandatory mediation, advisory arbitration, interest based bargaining, among others. None of the options would take away the City Council's final decision-making authority, but would focus on adding new ways to reach successful conclusions to negotiations.
5. The Council could place a companion measure on the November 2006 ballot that

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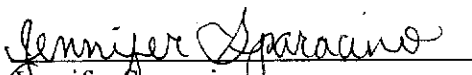
requires voter approval of an arbitrator's award and approval of the funding source, such as a tax increase, to pay for an arbitrator's award. The City would have to meet and consult with the affected labor organizations and comply with California Environmental Quality Act (CEQA) prior to placing a measure on the Ballot.

RECOMMENDATION:

Discussion of Study Session Follow Up

Since the April 11, 2006 Council meeting has been scheduled as a Study Session, no specific action was contemplated. However, Council may choose to refer the issue of binding interest arbitration to the City Manager for further informational reports for the April 25, 2006 City Council meeting. The POA and Firefighters' Union presidents have previously requested a decision from the Council on April 25, 2006 as to whether or not the City Council would place the binding interest arbitration on the November 2006 ballot. Meanwhile, the POA and Firefighters' Union are moving ahead with their petition drive. As an alternative, the Council could continue this topic to Tuesday, April 18, 2006 at 7:00 p.m. for further discussion. (This is not a regularly scheduled meeting.)

It is recommended that Council continue the Agenda item of whether to place ballot measure relating to the City Charter amendment for Police and Fire binding interest arbitration on the November 2006 City of Santa Clara election to the April 25, 2006 Council meeting agenda, with any requests for additional information referred to the City Manager.


Jennifer Sparacino
City Manager

Documents Related to this Report:

Attachment A – Police and Fire Departments as Percentage of General Fund Expenditures

Attachment B – “Binding Interest Arbitration Proposal: Legal Analysis”

Attachment C – Police Officer (Unit 2) Historical Compensation Adjustments

Attachment D – Firefighter (Unit 1) Historical Compensation Adjustments

Attachment E – Police Officers Association (Unit 2) Salary and Benefits w/2003 Negotiations Summary

Attachment F – Santa Clara City Firefighters, IAFF Local 1177 (Unit 1) Salary and Benefits w/2003 Negotiations Summary

Attachment G – Binding Interest Arbitration – North California Agencies